

SPEAKER BARRETT: Two lights have come on. I would recognize both Senator Lynch and Senator Schmit.

SENATOR SCHMIT: Senator Lynch, I am sorry I wasn't on the floor prior to the debate. I think I understand what the bill does but I guess I would like to ask a question, and that is, if there is anything in this bill that could possibly be construed as providing any kind of favorable treatment to an insurance company who might want to resist the payment of a claim by implying that perhaps there might be something fraudulent in the claim?

SPEAKER BARRETT: Senator Lynch, will you care to respond?

SENATOR LYNCH: I would hope not, Senator Schmit. The law very clearly spells out that if someone with malice determines that they would try to play that kind of a game, they would be subject to liability for that act. I think the amendment by Senator Ashford, for example, provides and protects the small operator, the small insurance company, the broker, and the agent in the field, especially does that. Now the larger insurance companies with their law departments probably are very sure at the time when they propose that some fraudulent act may exist. However, however, without access to that kind of a legal department, there are knowledgeable people in the business who are honestly concerned with fraudulent acts, who have, in fact, a reasonable and honest concern, not a malicious concern, that sometimes may be reluctant to report that kind of fraud. I think this provides that kind of avenue for that person. But no circumstances, in no circumstances where here is malice would that person escape the liability of that action and I don't think this bill would promote that.

SENATOR SCHMIT: I don't know if they have to prove malice or not, and I guess my concern is this. I am well aware of the problems that we are trying to address here, and I concur with trying to resolve that problem, but I do not want this bill to become a vehicle that an insurance company can hide behind to dodge the payment of a legal legitimate claim by raising the question or by even perhaps instilling any sense of fear into the insured person that there might be some question as to the legitimacy of the claim. There are those areas of fraud with which you and I are both familiar that I think need to be addressed. But by the same time, at the same time, I do not want to provide an additional cloak of immunity for an insurance company who might decide that they do not want to pay a claim